

EXHIBIT “A”

Certified Copy Transcript

In The Matter Of:

Kalie Mutter vs. Indian River Transport, Co., and David Hill

Deposition of David J. Gower, MD

April 20, 2020



AccuTran, Inc.

---certified court reporters---

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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Video deposition of DAVID J. GOWER, M.D., taken on behalf of the Plaintiff, pursuant to Notice and agreement of counsel, in accordance with the Federal Rules of Procedure, before Debbie C. Hennings, Registered Professional Reporter, conducted remotely via Zoom Videoconference, on the 20th day of April 2020, commencing at the hour of 1:33 p.m.

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1 **Q.** And in your practice, have you seen occasion to
2 treat patients who seem to genuinely be experiencing pain
3 despite the absence of significant pathology?

4 **A.** I have seen it all ways, yes.

5 **Q.** When you say you have seen it all ways, you have
6 probably seen people have significant pathology and report
7 mild pain and where people have minor pathology and report
8 significant pain?

9 **A.** I have also seen people that came in the office
10 complaining of severe pain, had pathology, but then walked
11 out of the office, threw their cane in the back of their car
12 and drove off by themselves. I have basically seen it all,
13 yes.

14 **Q.** In this case you mentioned that you are of the
15 opinion that she, Ms. Mutter -- and I don't want to put words
16 in your mouth. Let me ask you this way: Do you agree that
17 Ms. Mutter did in fact suffer a back injury in this wreck?

18 **A.** Yes.

19 **Q.** And do you agree that she, at least based on her
20 reports, experienced back pain as a result of this wreck?

21 **A.** Yes.

22 **Q.** Do you agree that she needed treatment for the back
23 injuries she suffered in this wreck?

24 **A.** Yes.

25 **Q.** Doctor, all -- your image froze up. All we heard



1 was yes. I want to make sure we didn't miss anything.

2 A. Yes, I do believe that she had a back injury and I
3 do believe she would have benefited from treatment.

4 Q. Okay. I didn't think you said anything else, but
5 because it froze I wanted to make sure we didn't miss
6 anything. Okay. We're going to talk about that in a moment
7 here.

8 Before we do that, I want to just kind of close the
9 loop on your initial review. Do you know how much -- you
10 mentioned you spent ten hours getting ready for the
11 deposition. Do you know how much time you spent reviewing
12 the records before preparing your report?

13 A. No, sir, I don't recall. It was a while back.

14 Q. And other than the materials that are identified in
15 the report and the additional ones that you referenced that
16 you have been provided -- actually, let me ask you this:
17 When you generated this report, are all the materials you
18 relied upon the ones that are identified in the report?

19 A. Yes, sir.

20 Q. And does report accurately and completely set forth
21 your opinions?

22 A. You broke up again.

23 Q. Yes, sir. Did this report -- does the report
24 accurately and completely summarize your opinions in this
25 case?



1 clear to the jury. I'm not going to waste more of my time
2 asking questions about it.

3 On number one, anything else we need to discuss on
4 number one, Doctor, before we have that completely covered?

5 A. I think you were going to ask me about the efficacy
6 of epidurals versus back pain treatment versus leg pain
7 treatment. The epidural puts medication around the nerve
8 root and is much more effective in treating radiculopathy,
9 sciatica and radiculopathy. In fact, it specifically says
10 that her reflexes, gait, and sensation are all normal.

11 Q. Okay. anything else, Doctor, you want to add?

12 A. No, sir.

13 Q. All right. And then we go on to number two. "While
14 the radiology report states that the disc herniations at L4-5
15 and L5-S1 are moderate, the actual images demonstrate a minor
16 bulge on the actual images." Did I read that correctly?

17 A. Yes.

18 Q. Does that accurately state your second opinion?

19 A. Yes.

20 Q. We touched on this before. You agree that there are
21 herniations or bulges at L4-5 and L5-S1, correct?

22 A. Yes.

23 Q. And it sounds like this opinion is simply saying
24 that you wouldn't call them moderate, you call them minor,
25 correct?



1 your discs are going to appear herniated, correct?

2 A. Not necessarily.

3 Q. What do you mean not necessarily?

4 A. Well, in older people, somebody older than 19 years
5 old, the discs will lose their elasticity and they will stay
6 in that position. If somebody has a motor vehicle accident
7 and stretches the ligaments associated with the disc, it also
8 might demonstrate herniation, as this one does.

9 Q. So here the herniations that appear on her imaging,
10 you reached a conclusion that those herniations were caused
11 from the motor vehicle wreck?

12 A. I believe that the one at L4-5 is associated with
13 the motor vehicle accident, where it's more on the right
14 side. If she was 60 years old, I would say no, but she's 19.
15 I think that this herniation is related to her motor vehicle
16 accident.

17 Q. I think what you're talking about is as people age
18 they can have degenerative changes in their spine, correct?

19 A. Yes, sir. As people age, not everybody does, but
20 most lose their elasticity in the disc and it will
21 consistently stay in a herniated position.

22 Q. But you wouldn't expect to see those sorts of
23 degenerative change in a 19-year-old, correct?

24 A. Not necessarily.

25 Q. In this case it sounds like the L4-5 herniation you



1 attribute to the wreck, but I take it the L5-S1 you don't; is
2 that correct?

3 A. Neither one of these is that bad. They look
4 impressive from the side view, but the more accurate way to
5 look at them is an axial, the cross-section view. And
6 neither one is that bad as far as the degree of encroachment
7 upon the nerve root or encroachment upon the spinal canal.
8 And I would tend to disagree that this is a surgical
9 pathology.

10 Q. That wasn't my question, Doctor.

11 A. Okay.

12 Q. The L5-S1, do you believe that the bulge at L5-S1
13 was caused by this motor vehicle wreck?

14 A. Yes.

15 Q. All right. So when we talk about -- we touched on
16 this earlier when we were just talking generally about the
17 imaging. Bulges or herniations can be symptomatic or
18 asymptomatic, correct?

19 A. Yes.

20 Q. And simply looking at the imaging will tell you if
21 one's there, but it's not going to tell you if it's causing
22 pain or not, correct?

23 A. That's correct.

24 Q. Okay. Anything else we need to discuss on number
25 three?



1 Q. And that doesn't cause you to be critical of her in
2 any way, correct?

3 A. No, I think she was unfortunate in the way she was
4 treated.

5 Q. What do you mean?

6 A. I think that she had far more injections and surgery
7 than it was necessary. She should have been treated much
8 more conservatively in the beginning. I don't think that was
9 her fault. She was sent there by her attorney. I don't
10 believe it was you.

11 But she was sent by her attorney and I am clearly
12 not happy with the care that she received. She was a young
13 lady. She should have been treated better than this.

14 Q. And did you see through her deposition testimony
15 that the main thing she wants to do is just get to how her
16 life was before this wreck?

17 A. Yes. She also wants to open a catering business.
18 She's having difficulty with being a line chef. Some of that
19 might be inappropriate treatment that she received.

20 Q. And let me ask you that. As it relates to her
21 ongoing symptoms, are you able to tell me which are ones you
22 think might be from the -- are more likely than not are the
23 result of inappropriate treatment?

24 A. Well, now she has a hole in her back and she's had
25 her discs burned at two levels with a laser. I don't think I



1 would be able to sort that out. The interesting thing about
2 her second MRI scan that she had several years later is that
3 the bulge, the herniation is described as less.

4 David Bowen, who read that report, is a very
5 reasonable radiologist and I would tend to believe what he
6 says. I believe that she probably would have achieved this
7 level of improvement without all of the injections and
8 burning and surgeries and what have you.

9 I think that was a little bit of rush to judgment on
10 the invasiveness.

11 **Q.** Have you seen instances where, even with excellent
12 nonoperative care, patients continue to have back pain?

13 **A.** Yes. Then they become surgical candidates.

14 **Q.** Even with excellent surgical care, patients continue
15 to have back pain?

16 **A.** I'm sorry, you broke up.

17 **Q.** You talked about then they become surgical
18 candidates. Even -- surgery is not the guarantee to fix a
19 patient's complaints, correct?

20 **A.** No, sir, it's not.

21 **Q.** In fact, no treatment is a guarantee to fix the
22 complaints, correct?

23 **A.** That's correct.

24 **Q.** And just because a treatment doesn't fix it doesn't
25 mean it wasn't an appropriate treatment, correct?

